

05-937 JAN 23 2006

No.05 — OFFICE OF THE CLERK

**In the
Supreme Court of the United States**

VENTURA GROUP VENTURES, INC.,
a California corporation,

Petitioner,

v.

STATE OF CALIFORNIA,

Respondent.

**On Petition for a Writ of Certiorari to the United
States Court of Appeals for the Ninth Circuit**

PETITION FOR WRIT OF CERTIORARI

JOHN R. JOHNSON

Counsel of Record

HEILY & BLASE

A PROFESSIONAL LAW CORPORATION

590 POLI STREET

VENTURA, CA 93004

(805) 667-4970

Counsel for Petitioner

ISSUES PRESENTED FOR REVIEW

1. Does sovereign immunity preclude claims brought by a private party in federal district court seeking money damages against a State for an uncompensated taking of private property for public use?
2. Is such an action maintainable directly under the Fifth and Fourteenth Amendments to the United States Constitution pursuant to the district courts' federal question jurisdiction under 28 *U.S.C.* §1331?
3. Did the Ninth Circuit misapprehend and misapply the prior and subsequent decisions of this Court to reach the conclusion that there was no federal constitutional damage remedy for an uncompensated taking against the States merely because the States are not "persons" for purposes of the statutory damage remedy Congress provided under 42 *U.S.C.* §1983?

PARTIES TO THE PROCEEDINGS

Petitioner

Ventura Group Ventures, Inc., a California corporation
(hereinafter "VGV")

Respondent

State of California

Other Parties

None

CORPORATE DISCLOSURE

Ventura Group Ventures, Inc., the Petitioner in the captioned matter, has no private or publicly held companies owning ten percent (10%) or more of its stock.

TABLE OF CONTENTS

	Page
ISSUES PRESENTED FOR REVIEW	i
PARTIES TO THE PROCEEDINGS	ii
CORPORATE DISCLOSURE	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	2
CERTIORARI IS PROPER IN THIS CASE	14
1. Whether or Not a State Is Subject to Private Party Just Compensation Claims in Federal Courts Is a Critically Important Issue Deserving of this Court's Attention.	14
2. Certiorari Should Also Be Granted to Address the Issues Raised by Justice Rehnquist Regarding the "State Litigation Requirement" Imposed by <i>Williamson County</i> Before Access to the Federal Courts Is Allowed	17

CONCLUSION	18
------------------	----

APPENDIX

Appendix A - Ninth Circuit Order Denying Rehearing Dated 10/25/05	1a
--	----

Appendix B - Ninth Circuit Judgment and Memorandum Dated 9/16/05	3a
---	----

Appendix C - District Court Order Dated 10/27/02	6a
---	----

Appendix D - Complaint Dated 11/14/02	12a
--	-----

Appendix E - Petition for Rehearing Dated 9/27/05	31a
--	-----

Appendix F - Appellant's Opening Brief Dated 11/14/02	45a
--	-----

Appendix G - Appellee's Opening Brief Dated 3/24/04	83a
--	-----

Appendix H - Appellant's Reply Brief Dated 2/20/04	112a
---	------

TABLE OF AUTHORITIES

CASES	Page
<i>Armstrong v. United States</i> , 364 U.S. 40 (1960)	15
<i>Arthur v. City of Petaluma</i> , 165 P. 698 (Cal. 1917)	10
<i>Azul-Pacifico, Inc. v. City of Los Angeles</i> 973 F.2d 704 (9th Cir.1992)	4-6, 7, 16
<i>Chicago, Burlington & Quincy Railroad Co. v.</i> <i>Chicago</i> , 166 U.S. 226 (1897)	3-7, 17
<i>County of Los Angeles v. Bryam</i> 227 P.2d 4 (Cal. 1951)	10
<i>F & L Farm Co. v. City Council</i> , 77 Cal.Rptr. 2d 360 (1998)	9, 10
<i>First English Evangelical Lutheran Church</i> <i>of Glendale v. Los Angeles County</i> , 482 U.S. 304 (1987)	15
<i>Golden Gate Hotel Ass'n v. City and</i> <i>County of San Francisco</i> , 18 F.3d 1482 (9th Cir.1994)	4-7, 16
<i>Hibbs v. Winn</i> , 542 U.S. 88 (2004)	1
<i>Jacobs v. United States</i> , 290 U.S. 13 (1933)	15

<i>Kimel v. Florida Bd. of Regents</i> , 528 U.S. 62 (2000)	14
<i>Lewis v. Widber</i> , 33 P. 1128 (Cal. 1893)	10
<i>Missouri v. Jenkins</i> , 495 U.S. 33 (1990)	1
<i>Monongahela Navigation Co. v. United States</i> , 148 U.S. 312 (1893)	15
<i>Ocean Services Corp. v. Ventura Port District</i> 19 Cal.Rptr.2d 750 (Cal. 1993)	9
<i>Regional Rail Reorganization Act Cases</i> , 419 U.S. 102(1974)	15
<i>San Remo Hotel, L.P. v. City and County of San Francisco</i> , 125 S.Ct. 2491 (2005)	8, 17, 18
<i>Suitum v. Tahoe Regional Planning Agency</i> , 520 U.S. 725 (1997)	3-6, 13, 14
<i>Ventura Group Ventures, Inc. v. California</i> , 149 Fed.Appx. 633, 2005 WL 2250724, (C.A.9th 2005)	4
<i>Ventura Group Ventures, Inc. v. Ventura Port District</i> , 179 F.3d 840 (CA 9th Cir 1999)	10
<i>Ventura Group Ventures, Inc. v. Ventura Port District, et al.</i> , 24 Cal.4th 1089 (Cal. 2001)	10, 11

<i>Will v. Mich. Dep't of State Police,</i> 491 U.S. 58 (1989)	4-5
---	-----

<i>Williamson County Regional Planning Comm'n</i> <i>v. Hamilton Bank of Jackson City,</i> 473 U.S. 172 (1985)	3-8, 13-17
--	------------

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

28 U.S.C. § 1254(1)	1
28 U.S.C. § 1331	i, 1, 5, 6
28 U.S.C. § 1491	16
42 U.S.C. § 1983	i-8, 14, 16
Cal. Const. art. XIII A	9, 11
Cal. Const. art. XIII.C	11
Cal. Const. art. XIII.D	11
Cal. Const. art. XVI	10
Cal. Gov. Code § 970	10
Cal. Gov. Code § 970.8	11
Cal. Gov. Code § 971	10, 11
Cal. Harb. & Nav. Code § 6361	10
Cal. Rev. & Tax. Code § 2205	11
Cal. Rev. & Tax. Code § 2271	11
Federal Rules of Appellate Procedure Rule 35	7
U.S. Const. amend. V	i-3, 7, 8, 15, 17, 18
U.S. Const. amend. XIV	i-4, 7, 8, 12-14, 16

Ventura Group Ventures, Inc. respectfully requests that this Court issue a Writ of Certiorari to review the judgment entered in this case by the United States Court of Appeals for the Ninth Circuit affirming the judgment of the District Court. The grounds for this request are that the Ninth Circuit has “decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.”

OPINIONS BELOW

The opinion of the District Court in the instant dispute was unreported and is reproduced in App. G at 8a-11a. The Memorandum Decision of the Ninth Circuit Court of Appeals affirming the judgment of the district court is unreported and is reproduced in App. B at 3a-5a.

JURISDICTION

The District Court had jurisdiction under 28 U.S.C. §1331. The opinion of the United States Court of Appeals for the Ninth Circuit was filed on September 16, 2005. (App. B at 3a.) A timely Petition for Rehearing and Suggestion for Rehearing *En Banc* was filed on September 29, 2005. (App. E at 31a-42a.) The Petition for Rehearing was denied on October 25, 2005. 2001. (App. A at 1a-2a). The present petition is timely under 28 U.S.C. 2101(c). *Missouri v. Jenkins* 495 U.S. 33, 45-46 (1990). See, also, *Hibbs v. Winn* 542 U.S. 88, 96-98 (2004). This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides, among other things, that "No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

The Fourteenth Amendment to the United States Constitution, Section 1, provides that:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

42 U.S.C. § 1983 provides, in part:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . ."

STATEMENT OF THE CASE

This case involves a claim by Ventura Group Ventures, Inc. (hereinafter "VGV") for just compensation directly under the Fifth and Fourteenth Amendments to the United States

Constitution against the State of California (hereinafter "VGV's Fifth Amendment claim"). VGV's complaint did not allege any claim against California under 42 U.S.C. § 1983 (App. D at 12a-30a) for one good reason. This Court has made it absolutely clear that by enacting this statute Congress did not intend to abrogate the States' sovereign immunity from money damage claims brought in either state or federal court. This statute has consistently been construed as a vehicle to enforce the Fourteenth Amendment by money damage claims only against "persons" other than a state itself.

The liability of a state to pay "just compensation" money damages must be founded on the Constitution itself. VGV's Fifth Amendment claim against the State was based on this Court's decisions in *Chicago, Burlington & Quincy Railroad Co. v. Chicago*, 166 U.S. 226 (1897) ("*Chicago, Burlington*"), *Williamson County Regional Planning Comm'n v. Hamilton Bank of Jackson City*, 473 U.S. 172 (1985) ("*Williamson County*") and *Suitum v. Tahoe Regional Planning Agency*, 520 U.S. 725 (1997) ("*Suitum*").

Chicago, Burlington expressly recognized that if the state provides a reasonable post taking remedy designed to afford the injured property owner "full compensation" from the local entity the Fifth Amendment is not violated. In *Williamson County*, this Court made it clear that the other side of that coin is that the injured party must exhaust all available efforts to secure just compensation from the local entity under state law before the federal courts can have jurisdiction to provide a remedy. In *Suitum*, that rule was somewhat relaxed. There, it was held that the injured parties could seek relief in federal court if they were willing to assume the risk that a federal court would find that the state remedy they eschewed would have afforded full compensation for what was taken, had it been pursued.

Neither the District Court nor the Ninth Circuit took exception with the fact that VGV's complaint alleged a claim against the State of California for "inadequate compensation for a taking" in violation of the Fourteenth Amendment under the rationale of *Chicago, Burlington, Williamson County and Suitum*. Instead, they focused entirely on two existing Ninth Circuit decisions (*Azul-Pacifico, Inc. v. City of Los Angeles*, 973 F.2d 704, 705 (9th Cir.1992) and *Golden Gate Hotel Ass'n v. City and County of San Francisco*, 18 F.3d 1482, 1486 (9th Cir.1994) and one decision of this Court (*Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989))), none of which even considered whether a "taking claim" could be maintained against a state directly under the Constitution, to hold that:

"[p]laintiff[s] ha[ve] no cause of action directly under the United States Constitution. [A] litigant complaining of a violation of a constitutional right must utilize 42 U.S.C. §1983." *Azul-Pacifico, Inc. v. City of Los Angeles*, 973 F.2d 704, 705 (9th Cir.1992); see, also, *Golden Gate Hotel Ass'n v. City and County of San Francisco*, 18 F.3d 1482, 1486 (9th Cir.1994). ([A]ll claims of unjust taking ha[ve] to be brought pursuant to Section 1983; citing *Azul*.) And states may not be sued under § 1983 because they are not "persons" within the meaning of the statute. *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989). We are bound to follow binding Supreme Court precedent and prior decisions of this circuit." *Ventura Group Ventures, Inc. v. California* 149 Fed.Appx. 633, 634, 2005 WL 2250724, (C.A.9 (Cal.) 2005)